

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

FS MEDICAL SUPPLIES, LLC,

Plaintiff,

v.

**TANNERGAP, INC., TANNER
PHARMA UK LIMITED, et al.**

Defendants.

Civil Action Nos.

3:21-CV-00501-RJC-WCM

3:23-CV-00598-RJC-WCM

**JOINT STIPULATED REQUEST FOR ENTRY OF ADDENDUM TO STIPULATED
PROTECTIVE ORDER**

All parties to the above-captioned action hereby enter into this joint stipulation regarding the production of documents.

1. The Stipulated Protective Order entered on April 14, 2022 in the above-captioned action (ECF No. 25 in 3:21-cv-00501) provides for the designation and handling of confidential discovery materials. A substantially identical Stipulated Protective Order was entered in the related action *FS Medical Supplies, LLC v. Tanner Pharma UK Limited et al*, 3:23-cv-00598-RJC-WCM) on February 12, 2024 (“Tanner II”). *See* Tanner II, ECF No. 71.

2. To facilitate the production of documents by non-parties, the Parties have agreed to permit non-parties to designate certain discovery materials as Highly Protected Material (*i.e.*, “CONFIDENTIAL—ATTORNEYS’ EYES ONLY”).

3. The designation of information as “CONFIDENTIAL—ATTORNEYS’ EYES ONLY” may be used by a non-party that determines in good faith that discovery material is of such a private, sensitive, competitive or proprietary nature that disclosure to the Parties themselves is

highly likely to cause significant harm to the business or competitive position of the producing non-party's business.

4. The addendum provides that:

- material designated as “CONFIDENTIAL—ATTORNEYS’ EYES ONLY” shall not be disclosed under Paragraph 8.b.ii of the Stipulated Protective Order (which otherwise would permit disclosure to the Parties themselves, corporate officers, in-house counsel, and key employees of the Parties who have responsibility for directing or assisting litigation counsel in connection with this action);
- disclosure of material designated as “CONFIDENTIAL—ATTORNEYS’ EYES ONLY” may only be disclosed to persons identified in the Stipulated Protective Order in paragraphs 8.b(i), 8.b(iii), 8.b(iv), 8.b(v), 8.b(vi), 8.b(vii), 8.b(viii), and 9.
- any disclosure of material designated as “CONFIDENTIAL—ATTORNEYS’ EYES ONLY” under Paragraph 8.b(iv). (pertaining to deposition and trial witnesses) shall be limited to expert witnesses or any employee, agent, or testifying representative of the Producing Party; and
- Any Party that uses material designated as “CONFIDENTIAL—ATTORNEYS’ EYES ONLY” with expert witnesses at deposition or trial shall be responsible for designating such testimony on the record and in transcripts and videotapes as “CONFIDENTIAL—ATTORNEYS’ EYES ONLY” pursuant to Paragraph 7.c. of the Stipulated Protective Order.
- The addendum to the Stipulated Protective Order entered in this case shall apply to the stipulated protective order entered in Tanner II.

5. The Parties respectfully request that the Court enter the attached Addendum to Stipulated Protective Order.

Respectfully submitted this 23rd day of August, 2024.

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ADDENDUM TO PROTECTIVE ORDER

THIS MATTER IS BEFORE THE COURT on the Parties’ “Joint Stipulation For Entry Of Addendum to Protective Order” (Document No. ____) filed August __, 2024. This motion has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b), and immediate review is appropriate. Having carefully considered the motion and the record, the undersigned will grant the motion. Plaintiff FS Medical Supplies, LLC (“Plaintiff”) and Defendants TannerGAP, Inc. (“GAP”) and Tanner Pharma UK Limited (“Tanner UK”) (collectively “Parties”) anticipate non-parties may produce information that such non-parties determine in good faith are of such a private, sensitive, competitive or proprietary nature that disclosure to the Parties themselves, corporate officers, in-house counsel, and other employees of the Parties is highly likely to cause significant harm to the business or competitive position of the producing non-party’s business and request that the Court enter this Order setting forth the conditions for treating, obtaining, and using such information. Under Rule 26(c) of the Federal Rules of Civil Procedure, the Court finds good cause for the following Stipulated Addendum to Protective Order.

1. A non-party that determines in good faith that information produced by it in

connection with discovery in this case is of such a private, sensitive, competitive or proprietary nature that disclosure to the Parties themselves, corporate officers, in-house counsel, and other employees of the Parties is highly likely to cause significant harm to the business or competitive position of the producing non-party's business may designate such information as "Highly Protected Material."

2. The following provisions are added to the Stipulated Protective Order:

3. A new paragraph 2.g is added as follows:

"Highly Protected Material" means any Protected Material that is designated as "CONFIDENTIAL—ATTORNEYS' EYES ONLY," as provided for in this order, as well as any information copied or extracted therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by the Parties or their counsel in Court or in any other setting that might reveal such information.

4. A new paragraph 7.d is adding as follows:

Any non-party may designate Protected Material as Highly Protected Material with a "CONFIDENTIAL—ATTORNEYS' EYES ONLY" designation, provided that it meets the requirements for such designation as provided for herein. Written discovery, documents (which include "electronically stored information," as that phrase is used in Federal Rule of Procedure 34), and tangible things that meet the requirements for the confidentiality designations listed in Paragraph 8(b) may be so designated by placing the designation "CONFIDENTIAL—ATTORNEYS' EYES ONLY" on every page of the written material for which such designation is

appropriate prior to production. Any Party that uses material designated as “CONFIDENTIAL—ATTORNEYS’ EYES ONLY” with expert witnesses, at deposition, or at trial shall be responsible for designating such testimony on the record and in transcripts and videotapes as “CONFIDENTIAL—ATTORNEYS’ EYES ONLY.”

5. A new paragraph 8.c is added as follows:

Any non-party may designate Protected Material as Highly Protected Material (*i.e.*, “CONFIDENTIAL—ATTORNEYS’ EYES ONLY”) if it confidential, nonpublic, proprietary, commercially sensitive, and/or private information of an individual or entity of such a private, sensitive, competitive or proprietary nature that disclosure to the Parties themselves, corporate officers, in-house counsel, and other employees of the Parties is highly likely to cause significant harm to the business or competitive position of the producing non-party’s business. Unless otherwise ordered by the Court, Highly Protected Material (*i.e.*, “CONFIDENTIAL—ATTORNEYS’ EYES ONLY”) may be disclosed only to the persons identified in Paragraph 8.b(i), 8.b(iii), 8.b(iv), 8.b(v), 8.b(vi) (but only if the testimony of such persons is being offered by a Party as expert witness testimony under Federal Rule of Evidence 702 or testimony of any employee, agent, or testifying representative of the Producing Party), 8.b(vii), 8.b(viii), and 9. For the avoidance of doubt, in addition to the restrictions set forth in this Paragraph 8.c, Highly Protected Material shall be treated with all the protections and restrictions required by the Stipulated Protective Order for the treatment of

Protected Material (*i.e.*, “CONFIDENTIAL”). By way of example, and not by way of limitation, any Party who seeks to file Highly Protected Material must comply with Paragraphs 11, 12, 13, 15, 16, 17, and 18.

6. The designation of Discovery Material as Protected Material or Highly Protected Material shall not be a submission to the jurisdiction of the Court except for the limited purpose of enforcing or complying with the Stipulated Protective Order. Any non-party’s objection to personal jurisdiction in this or any other Court is preserved and shall not be waived or forfeited by the designation of Discovery Material as Protected Material or Highly Protected Material, nor by the non-party’s enforcement or compliance with the terms of the Stipulated Protective Order.

7. This addendum shall apply to the Stipulated Protective Order entered in *FS Medical Supplies, LLC v. Tanner Pharma UK Limited et al*, 3:23-cv-00598-RJC-WCM) on February 12, 2024 (“Tanner II”). *See* Tanner II, ECF No. 71.

SO ORDERED

The Honorable W. Carlton Metcalf
United States Magistrate Judge

WE SO STIPULATE THIS 23rd day of August, 2024

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